

Brown v. Hamot Medical Center

John Lubahn, M.D.

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| <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT<br/>FOR THE WESTERN DISTRICT OF PENNSYLVANIA</p> <p>LISA BROWN, M.D.,<br/>Plaintiff<br/>v.<br/>HAMOT MEDICAL CENTER,<br/>Defendant</p> <p>Deposition of JOHN LUBAHN, M.D., taken before<br/>and by Carol A. Holdnack, RPR, Notary Public in and<br/>for the Commonwealth of Pennsylvania, on Thursday<br/>March 16, 2006, commencing at 9:41 a.m., at the<br/>offices of Scarpitti &amp; Mead, Renaissance Center,<br/>1001 State Street, Suite 800, Erie, PA 16501.</p> <p>For the Plaintiff:<br/>Patrick Sorek, Esq.<br/>Leech Tishman Fuscaldo &amp; Lampi, LLC<br/>525 William Penn Place, 30th Floor<br/>Pittsburgh, PA 15219</p> <p>For the Defendant:<br/>Kerry M. Richard, Esq.<br/>Tobin O'Connor Ewing &amp; Richard<br/>5335 Wisconsin Avenue NW, Suite 700<br/>Washington, DC 20015</p> <p>Reported by Carol A. Holdnack, RPR<br/>Ferguson &amp; Holdnack Reporting, Inc.</p> | <p style="text-align: center;">1</p> | <p>JOHN LUBAHN, M.D., first having<br/>been duly sworn testified as follows:</p> <p style="text-align: center;">4 DIRECT EXAMINATION</p> <p>5 BY MR. SOREK:</p> <p>6</p> <p>7 Q. State your name for the record, please.<br/>8 A. John Lubahn.<br/>9 Q. And, Dr. Lubahn, have you had your deposition<br/>10 taken before?<br/>11 A. Yes.<br/>12 Q. And what kind of case was it?<br/>13 A. Primarily Workers' Comp. cases, medical/legal<br/>14 cases.<br/>15 Q. So about how many times have you had your<br/>16 deposition taken?<br/>17 A. In 25 years?<br/>18 Q. Yes.<br/>19 A. 50.<br/>20 Q. Okay.<br/>21 A. That's a guess, by the way.<br/>22 Q. All right. So you're familiar with the deposition<br/>23 process in terms of how it goes. I represent the Plaintiff,<br/>24 Dr. Brown. You have counsel here. It's a<br/>25 question-and-answer process. The information that you give</p>  |
| <p style="text-align: center;">1 INDEX</p> <p>2</p> <p>3 JOHN LUBAHN, M.D.</p> <p>4 Direct Examination by Mr. Sorek . . . . . 3</p> <p>5</p> <p>6</p> <p>7</p> <p>8 EXHIBITS:</p> <p>9 Lubahn Deposition Exhibit 1 . . . . . 114</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   | <p style="text-align: center;">2</p> | <p>is similar to what you would be providing if you were<br/>testifying at court. And that your answers have to be out<br/>loud. You've heard all of that many times before, I take<br/>it.</p> <p>5 A. Yes.</p> <p>6 Q. Who did you talk to besides your lawyer to prepare<br/>7 for the deposition today?</p> <p>8 A. Dana.</p> <p>9 Q. Ms. Ashley.</p> <p>10 A. Yes.</p> <p>11 Q. And that's it.</p> <p>12 A. Yes.</p> <p>13 Q. What documents did you review to prepare for your<br/>14 deposition today?</p> <p>15 A. Folders that they brought with them.</p> <p>16 Q. "They" meaning who?</p> <p>17 A. Dana and Attorney Richard</p> <p>18 Q. What were in the folders?</p> <p>19 A. For the most part, documents related to<br/>20 Dr. Brown's performance evaluations, in-training scores, her<br/>21 file.</p> <p>22 Q. Okay.</p> <p>23 A. That's all I can remember. It's kind of like this<br/>24 stack of papers we have here.</p> <p>25 Q. And you're indicating just maybe 3 or 4 inches of</p> |

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| <p>1 A. That she hadn't read enough. And that even when I<br/>2 gave her a subject to read about, she didn't read it.<br/>3 Q. You're referring to, what, the Epstein article?<br/>4 A. If she would have read anything on fractured<br/>5 dislocations of the hip, anything, I would have probably<br/>6 felt differently.<br/>7 Q. And do you know whether she did or not?<br/>8 A. She didn't read anything about classifications.<br/>9 Because there's many articles, many books. And after she<br/>10 didn't answer the question, she went right back to the book,<br/>11 which told me that she hadn't read it. Or if she had read<br/>12 it, she didn't learn it.<br/>13 Q. Then you say, "I have decided not to renew your<br/>14 contract at the end of this academic year." It sounds like<br/>15 you made the decision; is that correct?<br/>16 A. Pretty much.<br/>17 Q. Pretty much is something other than yes or no. So<br/>18 what are you thinking when you say --<br/>19 A. By then I had talked to the administration. I<br/>20 talked to Dr. Rogers. I talked to Dr. Sanders at Shriners<br/>21 Hospital. I talked with the faculty; Babins, Cermak. I<br/>22 can't remember whether I talked to Hood or Williams. I<br/>23 think by this time Suprock and Cortina had voiced some<br/>24 concern. That's all I remember.<br/>25 Q. Do you see any inconsistency in the testimony you</p>  | <p>1 well-outlined and she progressed well describing the<br/>2 messages to reduce the hip. Is that right word, messages?<br/>3 A. (Witness nods head.)<br/>4 Q. "She had a reasonable understanding of the<br/>5 postoperative management, but she didn't know the<br/>6 classification scheme." That's enough for you to consider<br/>7 it a failure.<br/>8 A. If that were a test in college, that would be a<br/>9 57 percent.<br/>10 Q. You then say, "The decision is a difficult one for<br/>11 me as for the entire facility, but I believe it to be best."<br/>12 When you talk about the entire faculty, who are you<br/>13 referring to?<br/>14 A. Myself and the clinical faculty.<br/>15 Q. So it seems like you're representing -- did you<br/>16 say the entire clinical faculty?<br/>17 A. (Witness nods head.)<br/>18 Q. Yes?<br/>19 MS. RICHARD: You have to speak.<br/>20 A. Yes.<br/>21 Q. It seems like you're representing that the entire<br/>22 clinical faculty was involved in the decision, and I would<br/>23 like to know if that's true or not.<br/>24 A. They were -- they were involved in the sense that<br/>25 I discussed it all with them. We didn't take a vote.</p>                               |
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| <p>1 just gave and your January 30th evaluation, 3337, where you<br/>2 tell her her clinical performance had improved and was<br/>3 acceptable?<br/>4 A. Her clinical performance was a roller coaster, if<br/>5 you read it and follow it through. I don't see an<br/>6 inconsistency. It was this -- and it just continued to do<br/>7 that. And when it continued to do that on into February, I<br/>8 felt that I could not trust that individual, nor was I<br/>9 willing to take the responsibility to her -- for her to<br/>10 function as a senior resident or a PGY-4 resident.<br/>11 Q. A person reading your January 30th, 2004<br/>12 evaluation where you say, "Her clinical performance had<br/>13 improved and was acceptable," and then seeing the<br/>14 termination letter 29 days later on March 1st might have a<br/>15 question about what happened between January 30th and<br/>16 March 1st to lead you to decide not to renew the contract.<br/>17 And that's my question.<br/>18 MS. RICHARD: I'm just going to object to the<br/>19 form. If you can answer, you can answer.<br/>20 A. I think I answered what happened. I got another<br/>21 two letters about her from the emergency room, and her<br/>22 performance in a clinical conference was a failure.<br/>23 Q. So that's -- well, actually, your notes about her<br/>24 performance say that her presentation of the history and the<br/>25 management of the tibial fracture is reasonably</p> | <p>1 Q. What did you discuss -- well, did you discuss not<br/>2 renewing her contract with them?<br/>3 A. Yes.<br/>4 Q. And did you have that discussion with everyone on<br/>5 the clinical faculty?<br/>6 A. I went over them earlier, but I'll do it again. I<br/>7 don't think I mentioned it to Dr. Hood, nor Dr. Williams. I<br/>8 discussed it in detail with Cermak and Babins because they<br/>9 had been involved. And I discussed it with --<br/>10 Q. Suprock and Cortina?<br/>11 A. Suprock, Cortina, Stefanovski, Kastrup. I did not<br/>12 call Galey. I called Rogers. I called Dr. Sanders. I<br/>13 spoke to Tim Cooney. I spoke to Jim Pepicello.<br/>14 Q. And was the gist of what you discussed with them<br/>15 that you were planning on dropping Lisa Brown from the<br/>16 program?<br/>17 A. Could not renew the contract at the end of that<br/>18 year.<br/>19 Q. Was it in the sense of you advising them of that<br/>20 or asking for their input?<br/>21 A. I advised them of that. I did ask for input.<br/>22 Q. Making the decision on March 1st left about four<br/>23 months left in Dr. Brown's PGY-3 year, correct?<br/>24 A. Yes.<br/>25 Q. Were there any conditions placed on Dr. Brown's</p> |

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| <p>1 participation in the program after March? And we know that<br/> 2 her participation was going to end, but between March and<br/> 3 June.</p> <p>4 A. What do you mean by "conditions"?</p> <p>5 Q. Well, would she be doing the same activities that<br/> 6 all the other PGY -- well, the other PGY-3 residents would<br/> 7 be doing?</p> <p>8 A. Yes.</p> <p>9 Q. She had no restrictions on care she was supposed<br/> 10 to provide, correct?</p> <p>11 A. No.</p> <p>12 Q. In fact, you told her that -- in your letter,<br/> 13 March 1st -- I'm sorry, that's wrong. But you did expect<br/> 14 her to stay for the rest of the PGY-3 year.</p> <p>15 A. Well, to get complete credit for it. And to<br/> 16 finish that year, yeah, you would have to.</p> <p>17 Q. This also should be in the front. 1081.</p> <p>18 MS. RICHARD: 1081?</p> <p>19 MR. SOREK: Yes.</p> <p>20 MS. RICHARD: Okay.</p> <p>21 THE WITNESS: Okay.</p> <p>22 Q. That's a note about a meeting with Dr. Brown on<br/> 23 March 1st when you gave her the March 1st letter, correct?</p> <p>24 A. Right.</p> <p>25 Q. Do you remember what you discussed at the meeting?</p>   | <p>1 two numbers. See if you can find it at 1080.<br/> 2 MS. RICHARD: Yes. It's the next page --<br/> 3 MR. SOREK: Okay. That's fine too.<br/> 4 MS. RICHARD: Okay. Agency 1080?<br/> 5 MR. SOREK: Yes.<br/> 6 THE WITNESS: Okay.</p> <p>7 Q. This is a note from you about a meeting with<br/> 8 Dr. Brown, March 3rd, 2004. It says you met with her at<br/> 9 some length, between 12:15 and 12:45 p.m. for 30 minutes.<br/> 10 And who -- I guess who initiated the meeting?</p> <p>11 A. I don't remember.</p> <p>12 Q. Do you remember what was discussed?</p> <p>13 A. Pretty much what was said in the meeting is<br/> 14 outlined here.</p> <p>15 Q. All right. She discussed some of the documents in<br/> 16 her file, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And it sounds like she wants to challenge<br/> 19 Dr. Cermak's letter, correct?</p> <p>20 A. Yes.</p> <p>21 Q. Did you discuss that with her, or not?</p> <p>22 A. I did.</p> <p>23 Q. Did or did not?</p> <p>24 A. I did.</p> <p>25 Q. Do you remember what you said?</p>   |
| <p>74</p> <p>1 A. Yes.</p> <p>2 Q. What did you discuss?</p> <p>3 A. It was a fairly brief meeting, which I believe is<br/> 4 accurately outlined in here. I gave her the letter. She<br/> 5 read it. She said that she understood my academic concerns<br/> 6 but remained defensive of her clinical performance.</p> <p>7 Q. In this note, you say, in the first sentence, the<br/> 8 letter states, "Your decision with that of the institution's<br/> 9 Human Resource Department." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What do you mean by that?</p> <p>12 A. Dana and Don Interlined.</p> <p>13 Q. I think I know where you're going, but we have to<br/> 14 kind of fill that in. Those are just two names. What was<br/> 15 their involvement?</p> <p>16 A. Well, they do the contracts, and organize the<br/> 17 human relations part of a resident's experience at Hamot on<br/> 18 the educational component, or the HR component. So to not<br/> 19 renew a contract would involve that department. And to that<br/> 20 extent, I involved that department.</p> <p>21 Q. Were they involved in the decision? Were they<br/> 22 involved in just processing the decision once you made it?</p> <p>23 A. Processing.</p> <p>24 Q. Okay. Now, we're back to 3315. Actually, well,<br/> 25 see if you can find it at -- I have two -- same document at</p> | <p>76</p> <p>1 A. Well, I think I said that it wasn't the sole<br/> 2 factor in my decision, that it admittedly was her word<br/> 3 against, not so much Dr. Cermak's, but the emergency room.<br/> 4 And left it at that.</p> <p>5 Q. The last sentence says you reassured her that the<br/> 6 decision not to renew her contract was not based on any one<br/> 7 of the documents but the entire picture. When you said "the<br/> 8 entire picture," do you know what you had in mind at that<br/> 9 time?</p> <p>10 A. Her clinical performance from day one.</p> <p>11 Q. And the clinical performance you had in mind on<br/> 12 that day was what?</p> <p>13 A. I don't understand.</p> <p>14 Q. Okay.</p> <p>15 A. This was based on her whole performance.</p> <p>16 MR. SOREK: See if you have 1137.</p> <p>17 MS. RICHARD: Again, in the chronological section?</p> <p>18 MR. SOREK: Yes, in the front.</p> <p>19 THE WITNESS: Okay.</p> <p>20 Q. This is a document signed by you. It says, "Lisa<br/> 21 Brown, MD, 7/12/04," at the top. What's the purpose of this<br/> 22 document?</p> <p>23 A. I guess, in retrospect it's just a summary of some<br/> 24 of my thoughts that led to my decision not to renew her<br/> 25 contract.</p> |

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| <p>1 under process in case advancement, criteria are not met. Do<br/> 2 you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Did you apply this process to Dr. Brown?</p> <p>5 A. I think in general. Maybe not to this specific<br/> 6 level, but I think in general.</p> <p>7 Q. Generally, what did you think you did that was<br/> 8 consistent?</p> <p>9 A. Well, she was on academic probation. She was<br/> 10 closely evaluated, scrutinized, given more than one<br/> 11 opportunity to improve. I think if you stretch it out over<br/> 12 three years, she was given many opportunities to improve. I<br/> 13 think she was given feedback.</p> <p>14 Q. Let me stop you there. The -- about in the<br/> 15 middle, the provision talks about a letter outlining reasons<br/> 16 for academic probation, and expectations given to the<br/> 17 resident. It talks about the period of probation. And then<br/> 18 it says, "During that time, the resident is expected to<br/> 19 demonstrate improvement and will receive, at minimum,<br/> 20 monthly reevaluations." Do you know whether those monthly<br/> 21 reevaluations were done?</p> <p>22 A. I don't think we produced written documents on a<br/> 23 monthly basis. I know we spoke with her on a monthly basis<br/> 24 through the end of June of 2000 and -- It would have been 3.</p> <p>25 Q. Do you know what the policy is referring to?</p> | <p>93</p> <p>1 to that date.</p> <p>2 (Brief interruption.)</p> <p>3 Q. If you take a look at the third page of the<br/> 4 policy. The first sentence, "Should the resident fail to<br/> 5 improve or to meet the expectations as identified in the<br/> 6 academic probation letter, the faculty will determine at<br/> 7 that time if remediation will be deemed to be helpful."</p> <p>8 Does that apply to Dr. Brown's case?</p> <p>9 A. I think it does.</p> <p>10 Q. So tell us about the -- what you know about the<br/> 11 faculty's determination whether remediation will be deemed<br/> 12 to be helpful.</p> <p>13 A. Well, the faculty here means really the full-time<br/> 14 faculty which is basically me. Although, Dr. DeLullo has<br/> 15 now joined me, and I do take into consideration the<br/> 16 evaluations of all of the part-time faculty.</p> <p>17 Q. So when this policy refers to faculty, it actually<br/> 18 means you.</p> <p>19 A. Dr. Kuehn, at the time, I believe. Dr. Rogers was<br/> 20 out on leave at the time. He was the other full-time paid<br/> 21 faculty member. But just to elaborate on Dr. Brown, it was<br/> 22 she would meet the expectations and then not meet them. It<br/> 23 was an up-and-down kind of ride with her.</p> <p>24 Q. Was there a fact -- was there a faculty<br/> 25 determination whether remediation will be deemed to be</p>         |
| <p>1 Face-to-face discussion, or phone discussion, or?</p> <p>2 A. I think it's open to debate.</p> <p>3 Q. The last sentence says -- well, let me back up a<br/> 4 little bit. This section also says, "Should it be<br/> 5 determined that the resident requires additional<br/> 6 remediation, he or she will likely need to repeat those<br/> 7 activities in which he or she did not meet expectations at<br/> 8 the current level of training. Only when these requirements<br/> 9 are met will the resident be considered for advancement, at<br/> 10 such time academic probation will be lifted and the resident<br/> 11 will continue his/her training at the next level." Did that<br/> 12 apply to Dr. Brown?</p> <p>13 A. Yes.</p> <p>14 Q. In your view, once academic probation is lifted,<br/> 15 does the resident then have a clean slate?</p> <p>16 A. No.</p> <p>17 Q. How does that work?</p> <p>18 A. Well, I think the slate is the slate. And the<br/> 19 resident at any given time should know where he or she<br/> 20 stands academically and in terms of their clinical<br/> 21 performance.</p> <p>22 Q. And they would gather that information how?</p> <p>23 A. I don't think that's information that you gather.</p> <p>24 You already have it. Everything that Dr. Brown knew to that<br/> 25 point had been discussed with her. She knew her performance</p>                  | <p>94</p> <p>1 helpful?</p> <p>2 A. Well, that was really the time that I spoke with<br/> 3 Dr. Babins and Dr. Cermak, and asked them to work very<br/> 4 closely with her. It was my recollection of the same<br/> 5 probationary time we're talking about -- which is thinking<br/> 6 backwards in '03, it's June, May and April.</p> <p>7 Q. Well, correct me if I'm wrong on this. But it<br/> 8 seems like, if you read the first sentence the resident is<br/> 9 supposed to -- the resident gets the academic probation<br/> 10 letter, and that this provision applies if the resident<br/> 11 fails to improve on the deficiencies identified in the<br/> 12 letter. It seems like then there's a faculty determination,<br/> 13 but I could be wrong. I'm asking, what is your<br/> 14 interpretation of that.</p> <p>15 A. Yeah, I don't think she necessarily failed. So<br/> 16 from that perspective, it doesn't apply, but she was closely<br/> 17 scrutinized by the faculty.</p> <p>18 Q. And this was after the probation was over, or<br/> 19 during?</p> <p>20 A. I view that statement as kind of a continuum. I<br/> 21 guess if you view it as if the -- if she would have gone<br/> 22 through the probation, and failed to meet the requirements<br/> 23 of the probation, then the faculty decides what do we do<br/> 24 next. That really didn't apply here.</p> <p>25 Q. Why not?</p> |